

## Department of the Navy, DoD

## § 724.902

set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

(A) A list of the issues on which the SRA's decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in § 724.806(f).

(B) The SRA's response to items submitted as issues by the applicant.

(3) *Response to the rebuttal.* (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in § 724.806.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material, that fact shall be noted.

(4) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the NDRB's proposed decisional document.

### § 724.815 Complaints.

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically identified violation of 32 CFR part 70 or any ref-

erences thereto. Complaints will be reviewed pursuant to 32 CFR part 70.

## Subpart I—Standards for Discharge Review

### § 724.901 Objective of discharge review.

The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of the review and the underlying factors which aid in determining whether the standards are met shall be consistent with historical criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in a discharge. Neither the NDRB nor the Secretary of the Navy shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the NDRB shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

### § 724.902 Propriety of the discharge.

(a) A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(b) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court) the NDRB will recognize an

error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

(d) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the NDRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood v. Secretary of Defense* to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An other than honorable (formerly undesirable) discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

#### § 724.903 Equity of the discharge.

A discharge shall be deemed to be equitable unless:

(a) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge, if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(b) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct and proficiency ratings (numerical and narrative);

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

(vii) Level of responsibility at which the applicant served;

(viii) Other acts of merit that may not have resulted in formal recognition through an award or commendation;

(ix) Length of service during the service period which is the subject of the discharge review;

(x) Prior military service and type of discharge received or outstanding post service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(xi) Convictions by court-martial;